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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 LEONARD K. HOLWELL,
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13 v. Plaintiff,
14 JP MORGAN CHASE BANK, N.A., et al.,
Defendants.

Case No. 08cv1060-BTM (WMc)

**ORDER RE MOTION FOR LEAVE
TO AMEND**

15 Plaintiff moves for leave to file a second amended complaint to add the Federal
16 Deposit Insurance Corporation ("FDIC") in its corporate capacity as a Defendant in this case.
17 For the reasons that follow, this motion is **GRANTED**.

18 **I. BACKGROUND**

19 On June 16, 2008, Plaintiff filed a complaint against Washington Mutual Bank
20 ("Washington Mutual") alleging conversion of depositor's funds and aiding and abetting
21 wire fraud. On or about September 25, 2008, the Office of Thrift Supervision appointed
22 the FDIC as the receiver of Washington Mutual. Approximately three weeks later, on
23 October 14, 2008, Plaintiff filed an amended complaint naming JP Morgan Chase Bank,
24 N.A., as the successor to Washington Mutual, as the sole Defendant. On March 2, 2009,
25 Judge Houston¹ granted the parties' joint motion to substitute FDIC in place of
26 Washington Mutual "as the party . . . in this action." [Dock. # 16] Plaintiff now moves for
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28 ¹ On March 25, 2011, Judge Houston issued an order of recusal, and the case was
reassigned to this Court. [Dock. # 51]

1 leave to amend his complaint to add the FDIC in its corporate capacity as a Defendant.

2 **II. DISCUSSION**

3 Under Fed. R. Civ. P. 20(a)(2), persons may be joined as a defendant in an action
 4 if: “(A) any right to relief is asserted against them jointly, severally, or in the alternative
 5 with respect to or arising out of the same transaction, occurrence, or series of
 6 transactions or occurrences; and (B) any question of law or fact common to all
 7 defendants will arise in the action.” This rule “is to be construed liberally in order to
 8 promote trial convenience and to expedite the final determination of disputes, thereby
 9 preventing multiple lawsuits.” *League to Save Lake Tahoe v. Tahoe Regional Planning*
 10 *Agency*, 558 F.2d 914, 917 (9th Cir. 1977).

11 Plaintiff asserts that “a portion of Plaintiff’s claim . . . is for the recovery of insured
 12 bank deposits” maintained by Washington Mutual before it failed and that he is entitled to
 13 recovery under 12 U.S.C. § 1821(f). (Mem. at 2-3) Although Plaintiff’s proposed second
 14 amended complaint does not set forth a claim under this theory, the Court finds that a
 15 claim against FDIC in its corporate capacity for recovery of insured bank deposits would
 16 satisfy the requirements of Fed. R. Civ. P. 20(a)(2). The Court **GRANTS** Plaintiff’s motion
 17 for leave to amend with the understanding that the Second Amended Complaint will set
 18 forth a basis for recovery against FDIC in its corporate capacity. However, if the second
 19 amended complaint that Plaintiff files does not address this deficiency, Defendants may
 20 seek dismissal.

21 Defendants raise several arguments as to why even if the requirements of Rule
 22 20(a)(2) are met, leave to amend would still be improper. None are persuasive at this
 23 time.

24 Most prominently, Defendants assert that leave to amend would be futile because
 25 the statute of limitations on any claim regarding payment of insured deposits under 12
 26 U.S.C. § 1821(f) has expired. Under the statute of limitations set forth in § 1821(f)(5),
 27 “Any request for review of a final determination by the Corporation [FDIC] regarding any
 28 claim for insurance coverage shall be filed with the appropriate United States district court

1 not later than 60 days after the date on which such determination is issued.” On July 27,
 2 2009, the FDIC sent Plaintiff a Notice of Disallowance of Claim, see FDIC’s Status Report
 3 of November 23, 2009, and it appears that Plaintiff has not sought review of this agency
 4 determination.

5 Nevertheless, such facts do not direct a conclusion that Plaintiff’s claims under §
 6 1821(f) are time-barred. Although the record does not appear to contain a copy of
 7 Plaintiff’s claim or the FDIC’s Notice of Disallowance of Claim, it is likely that any
 8 administrative determination was limited to a claim against FDIC as a receiver pursuant to
 9 12 U.S.C. § 1821(d). On March 13, 2009 – approximately two months before Plaintiff
 10 filed an administrative claim – , Plaintiff received a letter from the FDIC discussing the
 11 procedure for bringing claims under 12 U.S.C. § 1821(d)(5)(C). This letter concludes:

12 If a portion of your claim is for an insured deposit, your claim is not against the
 13 Receiver but rather is against the FDIC in its ‘corporate’ capacity as deposit
 14 insurer. An insured depositor’s rights are prescribed in 12 U.S.C. Section 1821(f)
 15 and differ from the rights described in the preceding paragraphs.

16 (Pl. Ex. B) Thus, the record does not indicate that the Plaintiff has made a claim for an
 17 insured deposit and if so, that the FDIC has made a final determination on this claim,
 18 which would trigger the statute of limitations under § 1821(f).² Moreover, to the extent
 19 that the FDIC argues that claims filed pre-receivership cannot be brought under this
 20 section (see FDIC Resp. at 6), the Court finds this position to be unsupported by case law
 21 and not persuasive. For these reasons, the Court finds that the statute of limitations in
 22 section 1821(f) does not render leave to amend futile.

23 Defendants remaining arguments as to why leave to amend should be denied are
 24 similarly not persuasive. Defendant FDIC asserts that the parties’ stipulation that FDIC is

26 ² Defendants may move for summary judgment with additional facts showing that §
 27 1821(f)(5) bars claims against the FDIC in its corporate capacity. The Court holds only that
 28 leave to amend would not be futile and does not address the sufficiency of Plaintiff’s claims. The Court also notes that neither party addressed the venue provision of § 1821(f)(4), which provides that review of a final agency determination shall be in the “Federal judicial district where the principal place of business of the depository institution is located.”

1 the receiver of Washington Mutual and that “FDIC is now the real party in interest” [dock.
2 # 15] precludes Plaintiff from seeking amendment to add FDIC as a Defendant in its
3 corporate capacity. (FDIC Resp. at 4-5) However, this stipulation contains no language
4 limiting Plaintiff’s right to add parties at a later date, and Defendant asserts no authority
5 for the proposition that a plaintiff cannot bring suit against the FDIC both in its capacity as
6 a receiver and as a corporation. Leave to amend will not be denied on this basis.

7 Finally, FDIC complains of Plaintiff’s “inordinate” one year and 11 month delay in
8 moving for leave to amend and asserts that granting leave to amend would prejudice it
9 because “the substitution of the FDIC in its corporate capacity will radically shift the
10 nature of the complaint and require the FDIC to undertake an entirely new course of
11 defense.” (FDIC Opp. at 6) Neither position has merit. Plaintiff’s suit was filed
12 approximately three months before FDIC was appointed as receiver, and this case was
13 stayed pursuant to 12 U.S.C. § 1821(d) from May 18, 2009 until December 8, 2009.
14 Thus, the amount of time Plaintiff could have sought leave to amend the complaint is
15 substantially less than one year and eleven months. Moreover, FDIC cannot credibly
16 claim that it surprised by Plaintiff’s position. As noted above, the FDIC’s letter to Plaintiff
17 contemplated the possibility that Plaintiff had a claim against the FDIC in its corporate
18 capacity, and in an April 2, 2009 filing, Plaintiff stated his intent to amend the complaint to
19 seek recovery against the FDIC in its corporate capacity if his administrative claim was
20 denied. [Dock. # 20 at 4] FDIC has not shown that Plaintiff has acted in bad faith or that
21 its purported prejudice is a sufficient ground to deny Plaintiff’s motion.

22 **III. CONCLUSION**

23 Plaintiff’s motion for leave to amend the complaint is **GRANTED**. Plaintiff shall file
24 a Second Amended Complaint within 20 days of entry of this order.

25 The sole issue raised by Plaintiff’s motion is whether the FDIC in its corporate
26 capacity could be joined as a defendant in this case. Defendants’ arguments regarding
27 the sufficiency of claims brought against FDIC as the receiver may be raised in a motion
28 to dismiss the Second Amended Complaint.

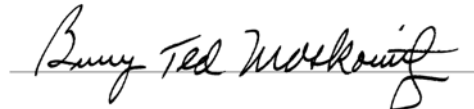
1 The parties shall appear on April 29, 2011 at 2:30 p.m. for a conference to discuss
2 JP Morgan Chase's status in this case in light of Judge Houston's order to substitute
3 FDIC in place of Washington Mutual "as the party . . . in this action."

4 **IT IS SO ORDERED.**

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6 DATED: March 30, 2011

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A handwritten signature in black ink, reading "Barry Ted Moskowitz", written over a horizontal line.

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Honorable Barry Ted Moskowitz
United States District Judge

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